ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION FOR RECONSIDERATION

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TELEPHONE CO., INC.

September 30, 1996

TABLE OF CONTENTS

SUMMARY

Margaretville Telephone Co., Inc. ("Margaretville") requests reconsideration of the *First Report and Order* in this proceeding on statutory and constitutional grounds.

I

Margaretville asked the Commission to adopt a Fifth Amendment remedy for ILECs deprived of state-certificated property rights by the implementation of Section 251 of the Telecommunications Act of 1996 ("1996 Act"). Consistent with Fifth Amendment precedents, Margaretville argued that a compensable taking of property will result if ILECs are divested of "their 'reasonable investment-backed expectation' to hold competitive advantages over new market entrants" (by virtue of their state franchises). Margaretville asked the Commission to adopt a just compensation process that will allow ILECs to recover the economic value of those competitive advantages that will be taken under the 1996 Act.

The Commission rejected without explanation Margaretville's underlying constitutional argument, and it did not respond to Margaretville's request for a Fifth Amendment remedy. That was clear error. The Commission is asked to provide a reasonable explanation for rejecting Margaretville's Fifth Amendment claim.

II

The Commission clearly erred in construing various provisions of the 1996 Act to give it jurisdiction to establish "national rules" to regulate "historically intrastate issues." That action violated the rule of statutory construction set out in Section 2(b)

of the Communications Act of 1934 ("Act") which expressly forbids the Commission from construing any provision of the statute to empower it to regulate intrastate matters. After admitting that the 1996 Act contained no "explicit grant of intrastate authority", the Commission assumed such authority by finding "strong evidence" of a jurisdictional grant in Sections 251 and 252 of the 1996 Act. Thus, the Commission did exactly what Section 2(b) explicitly forbids -- it conferred intrastate jurisdiction on itself by a process of statutory construction.

The Commission erred by construing Section 251(d)(1) as giving it "expansive" authority over intrastate matters. Section 251(d)(1) only gave the Commission authority to "establish regulations to implement the requirements" of Section 251. That limited authority cannot be interpreted to give the Commission plenary jurisdiction over intrastate matters *for the first time*. Moreover, Section 251(d)(1) cannot be construed to empower the Commission to put "national rules" in effect that conflict with the express authority granted the States under Section 252.

III

Because its national rules obviously implicate the Takings Clause of the Fifth Amendment, the Commission was required to have explicit "takings authority" before it could promulgate physical collocation and national pricing rules. The Commission found "express statutory authority" to order physical collocation in Section 251(c)(6). That section imposed a duty on ILECs to provide for physical collocation; it did not give the Commission *express*

authority to order physical collocation. That power was primarily granted to state commissions.

The Commission erred by disposing of all remaining "takings-related" issues by concluding that its national "pricing rules" will result in "just compensation." The 1996 Act does not expressly grant the Commission power to set pricing standards; that authority was given explicitly to the States.

IV

The Supreme Court has held that, under the Tenth Amendment and principles of federalism, "one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program." That principle is violated when the Federal Government commands the States to regulate according to Congress' instructions or to a "federal formula". The Commission's "national rules" include commands to the States that transgress the constitutional limitation on federal power.

The Commission explicitly ruled that it will be "necessary" for some states "to amend their rules and alter their decisions to conform to our rules". By directing states to amend their rules, the Commission directly compelled state regulation. It also directed state commissions to regulate according to its instructions. New Part 51 of the Rules contains several explicit directives to the States that are not found in the 1996 Act. Such "direct commands" to the States violate the Tenth Amendment.

The Commission's uniform national rules -- some of which will be "relative self-executing" -- and its "national baselines"

amount to federal formulas for the States to follow and enforce. By requiring the States to "administer" its national rules, the Commission conscripted state regulators as its agents. That is clearly unconstitutional.

In its haste to implement the 1996 Act, the Commission breached the "etiquette of federalism". It apparently read the 1996 Act to give it authority to issue an unfunded mandate to the States to administer a federal program. By attempting to regulate state regulators, the Commission exceeded the boundary of federal power and intruded upon the special preserve of state sovereignty.

V

The Commission is asked (1) to provide a reasoned response to Margaretville's comments, (2) to rescind its assertion of intra-state jurisdiction, (3) to narrowly tailor its implementation of Section 251 of the 1996 Act to the statutory and constitutional limitations on its authority, (4) to vacate those national rules that command state regulation, and (5) to publish guidelines to aid state commissions in the exercise of their authority under Section 252 of the 1996 Act.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION FOR RECONSIDERATION

Margaretville Telephone Co., Inc. ("Margaretville"), by its attorneys, and pursuant to Section 1.429(a) of the Commission's Rules ("Rules"), 47 C.F.R. § 1.429(a), hereby petitions the Commission to reconsider its *First Report and Order*, FCC 96-325 (Aug. 8, 1996) in the above-captioned rulemaking. In support thereof, the following is respectfully submitted:

Standing

Margaretville filed comments in this proceeding asking the Commission to adopt a Fifth Amendment remedy for ILECs deprived of state-certificated property rights by the implementation of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 251. *See* Reply Comments, at 2-4 (May 30, 1996). The Commission expressly rejected Margaretville's underlying constitutional argument, but the Commission provided no reasons for its decision. *See First Report and Order*, at 36 (¶ 68). Accordingly, Margaretville has standing to request reconsideration. It does so to permit the Commission to correct its error. *See, e.g., Springfield Television of Utah, Inc.* v. *FCC*, 710 F.2d 620, 629 (10th Cir. 1983).

Margaretville also challenges the Commission's assertion of plenary jurisdiction over intrastate matters on the ground that it

violates Section 2(b) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 152(b), and the Tenth Amendment. Those questions of law are presented in part for exhaustion purposes. *See Northwestern Indiana Telephone Co., Inc.* v. *FCC*, 872 F.2d 465, 470-71 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1035 (1990).

Argument

I. The Commission Must Provide A Reasoned Analysis Of The Fifth Amendment Issue

Notice and comment rulemaking procedures obligate the Commission to respond to all significant comments. *ACLU* v. *FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 959 (1988). *See* 5 U.S.C. § 553(c); 47 C.F.R. § 1.425. Thus, the Commission must respond to those "'comments which, if true, . . . would require a change in [its] proposed rule.'" *ACLU*, 823 F.2d at 1581 (emphasis omitted) (quoting *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 35 n.8 (D.C. Cir. 1987)). Margaretville's comments on the Fifth Amendment were significant under that test.

Margaretville argued that ILECs are entitled to just compensation if the implementation of Section 251 of the 1996 Act deprives them of valuable property rights under their state franchises. *See* Reply Comments, at 2-4. Had it accepted Margaretville's argument, the Commission clearly could not have adopted the TELRIC pricing standard, inasmuch as it allows only for the recovery of "forward-looking long-run economic costs." *First Report and Order*, at 328 (¶ 672). *See* 47 C.F.R. §§ 51.503-51.511.

The Commission appeared to recognize the significance of

Margaretville's comments by quoting its language. *See First Report and Order*, at 36 (¶ 68). *See also* Statement of Commissioner James C. Quello, at 2 (Aug. 8, 1996). [1/] However, the Commission misunderstood Margaretville's Fifth Amendment argument.

Margaretville did not claim "that the 1996 Act constitutes an unconstitutional taking." *First Report and Order*, at 36 (¶ 68). Indeed, no such facial claim could be made under the Takings Clause until after the Commission addressed the just compensation issue. The Clause does not proscribe the taking of property; it proscribes taking without just compensation. *Williamson Co. Regional Planning* v. *Hamilton Bank*, 473 U.S. 172, 194 (1985). So long as just compensation is presumptively available under the Tucker Act, the 1996 Act is not subject to a facial attack under the Takings Clause. *See id.* at 195; *Bell Atlantic Telephone Companies* v. *FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994).

Margaretville actually argued that a compensable taking of property will result if ILECs are divested of "their 'reasonable investment-backed expectation' to hold competitive advantages over new market entrants" (by virtue of their state franchises). Reply Comments, at 3 (quoting *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1005 (1984)). Margaretville asked the Commission to adopt a just compensation process that will allow ILECs to recover the economic value of those competitive advantages that will be taken under the 1996 Act. *See id.* at 3-4. The Commission did not respond either

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1/ Margaretville's response to Commissioner Quello is attached hereto.

to Margaretville's Fifth Amendment argument or its request for a Fifth Amendment remedy.

The Commission was required to provide a reasoned explanation for rejecting Margaretville's comments. *See Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983). The Commission simply stated a conclusion, and its reasoning was not apparent from its treatment of other Fifth Amendment issues.

The Commission resolved all takings-related issues by finding (1) that it has "express statutory authority to order physical and virtual collocation", and (2) that ILECs will receive just compensation under its TELRIC ratemaking methodology. *First Report and Order*, at 297 (¶ 617), 357 (¶ 740). Neither finding applies to the issue Margaretville presented.

The 1996 Act did not give the Commission express or exclusive authority to "take" property rights conferred under state law. Moreover, the Commission only considered "takings" jurisprudence applicable "to rate setting for public utilities". *Id.* at 354 (¶ 733). That law applies in the field of rate regulation when utilities "charge for their property serving the public." *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 307 (1989). It has no application to the "taking" of the property or property interests of utilities.

Just compensation for the "taking" of a property right is measured by the economic value of the right to its owner. *Ruckelshaus*, 467 U.S. at 1012. And just compensation for the loss of

valuable rights under a state franchise would be the diminution of the value of the franchise to its holder. *See Delmarva Power & Light Co.* v. *City of Seaford*, 515 A.2d 1089, 1103 (Del. Sup. Ct.), *cert. denied*, 498 U.S. 855 (1990). That loss is compensated by a monetary award, not by charging TELRIC-based rates.

To determine whether the 1996 Act works a compensable taking of state-certificated property interests, the Commission must consider three factors: "the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations." *Prune Yard Shopping Center* v. *Robbins*, 447 U.S. 74, 83 (1980). 2/ However, consideration of the last of these three factors could be dispositive of a taking question. *Ruckelshaus*, 467 U.S. at 1005.

Considering the significance of the factor, Margaretville properly asked the Commission to consider the "reasonable investment-backed expectations" of ILECs under state franchises when it addressed the Fifth Amendment implications of the 1996 Act. 3/ The Commission should provide a reasoned response to that request.

2/ State courts consider the same factors under the Fourteenth Amendment. *See, e.g., Rochester Gas & Electric Corp.* v. *New York Public Service Com'n*, 525 N.Y.S.2d 809 (N.Y. App. Div. 1988).

3/ The Commission chose to reject Margaretville's Fifth Amendment claim in its discussion of the "suggested approaches" for its rules. *See First Report and Order*, at 35-36 (¶ 67). The claim was not mentioned when the Commission ruled on Fifth Amendment issues. *See id.* at 296-97, 354-57.

II. The Commission Lacks Jurisdiction To Deprive ILECs Of Property Rights

A. The Commission Is Without Intrastate Authority

The Commission clearly erred in construing various provisions of the 1996 Act to give it jurisdiction to establish "national rules" to regulate "historically intrastate issues." *First Report and Order*, at 15 (¶ 24). That action violated the rule of statutory construction set out in Section 2(b) of the Act and the teaching of *Bell Atlantic*.

Section 2(b) of the Act expressly forbids the Commission from construing any provision of Chapter 5 of Title 47 of the United States Code to empower it to regulate intrastate matters. 47 U.S.C. § 152(b) ("nothing in this chapter shall be construed to apply or to give the Commission jurisdiction . . . ."). *See Louisiana Public Service Com'n* v. *FCC*, 476 U.S. 355, 371-79 (1986). Nevertheless, and after admitting that the 1996 Act contained no "explicit grant of intrastate authority", the Commission proceeded to assume such authority by finding "strong evidence" of a jurisdictional grant in Sections 251 and 252 of the 1996 Act. *First Report and Order*, at 45-46 (¶¶ 84, 87). Thus, the Commission did exactly what Section 2(b) explicitly forbids -- it conferred intrastate jurisdiction on itself by a process of statutory construction. The *Louisiana PSC* Court spoke directly to that point:

> [W]e simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate a federal policy. An agency may not confer power upon itself. To permit an agency to expand its power in the

> face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do.

476 U.S. at 374.

Even if it could avoid the statutory rule of construction contained in Section 2(b), the Commission erred by construing Section 251(d)(1) of the 1996 Act as giving it "expansive" rule-making authority over intrastate matters. *See First Report and Order*, at 49-50 (¶ 96). Section 251(d) only gave the Commission authority to "establish regulations to implement the requirements" of Section 251. *See* 47 U.S.C. § 251(d)(1), (3). The grant of authority to implement Section 251 cannot be construed to give the Commission plenary jurisdiction over intrastate matters *for the first time.* If it had intended to give the Commission intrastate jurisdiction, Congress presumably would have expressed its intent clearly, and not left it to the Commission "to define the scope of its own power." *ACLU*, 823 F.2d at 1567 n.32. Absent an express grant of intrastate authority, any interpretation of Section 251(d)(1) must give way to the explicit language of Section 2(b) of the Act, "which defines the [Commission's] jurisdictional reach." *Louisiana PSC*, 476 U.S. at 370. The Commission had no other choice after Congress chose not to amend Section 2(b).

The Commission's reading of Section 251(d) also defies the language of the provision. The plain meaning of "implement" is "to fulfill; perform; carry out" or "to put into effect according or by means of a definite plan or procedure." *The Random House Dictionary*

of the English Language 961 (2d ed. 1987). Thus, the Commission was authorized to adopt rules "to put into effect" the requirements of Section 251 applicable to telecommunications carriers and telecommunications numbering administration. *See* 47 U.S.C. § 251(a)-(c), (e)-(g). That did not empower the Commission to put national rules in effect that conflict with the express authority granted the States under Section 252 (and the Section 2(b)(2) jurisdictional limitation).

As the *Louisiana PSC* Court held, *see* 476 U.S. at 370, and the Commission recognizes, *see First Report and Order* at 615 (¶ 1286), the provisions of the 1996 Act should be read so not to create a conflict with the provisions of Section 252 applicable to state commissions. Therefore, the Commission's authority to implement Section 251 must be interpreted narrowly to avoid a conflict with the limitations imposed on the decision-making of state commissions, *see* 47 U.S.C. § 252(b)(4); the authority given state commissions to adopt arbitration standards (including establishing "any rates"), *see* 47 U.S.C. § 252(c); the power of state commissions to determine pricing standards, *see* 47 U.S.C. § 252(d); and the authority of state commissions to enforce state standards and state law, *see* 47 U.S.C. § 252(e).

B. The Commission Lacks "Takings Authority"

Because its national rules obviously implicate the Takings Clause, the Commission was required to have explicit "takings authority" before it could promulgate physical collocation requirements and national pricing rules. *See Bell Atlantic*, 234 F.3d at

1445-47. Recognizing that requirement, the Commission found "express statutory authority" to order physical collocation in Section 251(c)(6) of the 1996 Act. *First Report and Order*, at 297 (¶ 617). Section 251(c)(6), however, imposed a duty on ILECs to provide for physical collocation. *See* 47 U.S.C. § 251(c)(6). It did not provide the Commission with *express* authority to order physical collocation. That power was primarily granted to state commissions. *See* 47 U.S.C. §§ 251(c)(6), 252(b)(4)(C), (c)(3), (e).

The Commission erred further by claiming that its alleged Section 251 authority to order collocation allowed it to dispose of any remaining "takings-related" issue on the "question of just compensation." *First Report and Order*, at 297 (¶ 617). Even if Section 251 included express authority with respect to physical collocation (which it does not), that authority would not constitute express authority to establish national "pricing rules". *See id.* at 356 (¶ 738). And the 1996 Act simply does not expressly grant the Commission power to set pricing standards. That authority was given explicitly to the States. *See* 47 U.S.C. § 252(c)-(d).

III. The Commission's Rules Unconstitutionally Infringe On State Sovereignty

The Tenth Amendment has been interpreted "to encompass any implied constitutional limitation on Congress' authority to regulate state activities, whether grounded in the Tenth Amendment itself or in principles of federalism derived generally from the Constitution." *South Carolina* v. *Baker*, 485 U.S. 505, 511 n.5 (1988). One such limitation is that Congress may not "commandee[r] the legisla-

tive processes of States by directly compelling them to enact or enforce a federal regulatory program." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 288 (1981). As the Supreme Court explained in *New York* v. *United States*, 505 U.S. 144, 161 (1993) (citations omitted):

> We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. * * * * The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.

As the *New York* Court stated, "one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program." 505 U.S. at 144. That principle is violated when the Federal Government commands the States to regulate according to Congress' instructions, *Board of Natural Resources* v. *Brown*, 992 F.2d 937, 947 (9th Cir. 1993), or to a "federal formula". *Mack* v. *United States*, 66 F.3d 1025, 1030 (9th Cir. 1995). Several provisions of Sections 251 and 252 of the 1996 Act contain such direct commands to the States to regulate. *See, e.g.*, 47 U.S.C. §§ 251(f)(1)(B), 252(b)(4), (c), (d)(1)-(3), (e), (h).

The Commission obviously cannot rule on the constitutionality of Sections 251 or 252. *See GTE California* v. *FCC*, 39 F.3d 940, 946 (9th Cir. 1994). However, it has the obligation to consider the constitutionality of its own actions. *See Meredith Corp.* v. *FCC*, 809 F.2d 863, 874 (D.C. Cir. 1987). Thus, the Commission must con-

sider whether the manner in which it chose to implement Sections 251 and 252 transgressed the constitutional limitation on federal power. Margaretville submits that the Commission's "national rules" will effect a federal intrusion striking at the "core of state sovereignty reserved by the Tenth Amendment." *New York*, 505 U.S. at 176.

The ability of a state legislature, or a state administrative body, "to consider and promulgate regulations of its choosing must be central to a State's role in the federal system." *FERC* v. *Mississippi*, 456 U.S. 742, 761 (1982). 4/ Thus, the enactment of state regulation or the creation of a state program are "inherently central activities of a sovereign" which are protected by the Tenth Amendment. *Mack*, 66 F.2d at 1031. *See Frank* v. *United States*, 78 F.3d 815, 826 (2d Cir. 1996). Nevertheless, the Commission admittedly intruded on such state activities.

The Commission recognized the existence of state regulations that are inconsistent with its national rules. *See First Report and Order*, at 33 (¶ 62). The Commission explicitly ruled that "[i]t will be necessary in those instances for the subject states to amend their rules and alter their decisions to conform to our rules". *Id.* By directing those states to enact regulations according to its

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4/ Tenth Amendment precedents prior to *New York* (such as the quoted case) allowed Congress to constrict state sovereignty in a "pre-emptible field". *See New York*, 505 U.S. at 204 (White, J., dissenting). Unlike Congress, the Commission is currently without authority to completely preempt state regulation of intrastate telecommunications. *See* 47 U.S.C. §§ 152(b), 251(d)(3); *Louisiana PSC*, 476 U.S. at 373-76.

instructions, the Commission directly compelled state regulation, the constitutional evil that *New York* prohibited. *See* 505 U.S. at 144. *See also Board of Natural Resources*, 992 F.2d at 947.

In addition to compelling the States to issue regulations, the Commission has directed state commissions to regulate according to its instructions. New Part 51 of the Rules contains several explicit directives to the States that are not found in the 1996 Act. For example, the new Rules direct that (1) a LEC's rate for each element it offers "*shall* be established, at the election of the state commission", pursuant to the Commission's pricing methodology or its proxy ceilings and ranges, 47 C.F.R. § 51.503(b); (2) state commissions "*shall* establish different rates for elements in at least three defined geographic areas in the state", 47 C.F.R. § 51.507(f); and (3) an ILEC's rates for transport and termination of local traffic "*shall* be established, at the election of the state commission", on the basis of forward-looking economic costs, default proxies, or a bill-and-keep arrangement, 47 C.F.R. § 51.705(a). *See also* 47 C.F.R. §§ 51.317(a), 51.505(e), 51.513(a), 51.709(a), 51.715(d). Such "direct commands" to the States violate the Tenth Amendment. *Board of Natural Resources*, 992 F.2d at 947.

The Commission unquestionably constricted the sovereign power of state regulators "to make decisions and set policies". *FERC*, 456 U.S. at 761. Under the 1996 Act, state commissions were given authority to regulate the negotiation, arbitration and approval of interconnection and access agreements, *see* 47 U.S.C. § 252(b), (e); to establish pricing standards, *see* 47 U.S.C. § 252(d); and to rule

on requests for exemptions from the requirements of Section 251, *see* 47 U.S.C. § 251(f). Congress established general standards and procedures for the exercise of state authority, but it clearly did not command state commissions to regulate in accordance with a "federal formula". In contrast, the Commission adopted uniform national rules -- some of which will be "relative self-executing" -- and "national baselines" which amount to federal formulas for the States to follow and enforce. *First Report and Order*, at 22 (¶ 41), 32 (¶ 60). The Commission concedes that the States must "administer" its national rules. *See id.* at 15 (¶ 24), 28 (¶ 53). In effect, the Commission conscripted state regulators as its agents, which the constitution will not permit. *See New York*, 505 U.S. at 178.

By compelling state regulation, the Commission's rules violate the Tenth Amendment regardless of how light a burden is imposed on state officials. *See Frank*, 78 F.3d at 826. Nevertheless, the Commission should recognize that the 1996 Act already placed a "particularly onerous burden on the State[s]." *FERC*, 456 U.S. at 768. The "massive job" of resolving arbitration requests alone threatens to overwhelm some understaffed state commissions, and may necessitate the hiring of outside consultants and arbitrators. *See* Communications Daily, Aug. 22, 1996, at 3-4. The Commission's implementation of the statute only added to the burden on state regulators.

The Commission has compelled some state commissions to conduct rulemakings to conform to its national rules. Moreover, the Commis-

sion has increased the administrative burdens on state regulators. For example, recognizing that some states lack the necessary resources, the Commission nevertheless directed state regulators to conduct cost studies (using the Commission's costing methodology) under a federal deadline. *See First Report and Order*, at 298 (¶ 619); 47 C.F.R. § 51.503(b)(1). Moreover, it imposed procedural requirements on state proceedings (the creation of "written factual record") and even conferred standing on "affected parties "to participate in those proceedings. *See* 47 C.F.R. § 51.505(e)(2). Hence, the Commission not only commanded state commissions to conduct proceedings to apply federal standards to enforce national rules, but it imposed procedural due process obligations on state regulators.

In its haste to implement the 1996 Act by an extraordinary (and onerous) deadline, the Commission breached the "etiquette of federalism" and violated the Tenth Amendment in the process. *United States* v. *Lopez*, 115 S.Ct. 1624, 1642 (1995) (Kennedy, Jr., concurring). It apparently read the 1996 Act to give it authority to issue an unfunded mandate to the States to administer a federal program. 5/ By attempting to regulate state regulators, the

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5/ There is an element of unfairness to the Commission's directives to the States. While it conducts spectrum auctions that have added some $20 billion to federal coffers, the Commission forced state commissions to divert state resources and expend state funds to administer national rules. Margaretville assumes that the States have their own budgetary problems, and that state legislators have their own priorities in the allocation of state resources. Under these circumstances, it seems somewhat unfair for the Commission to "pass the buck" to the States, but deprive them of the power to enact their own programs and make their own policy decisions.

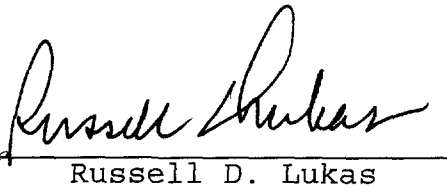
Commission exceeded the boundary of federal power and intruded upon the special preserve of state sovereignty.

Request for Relief

For all the foregoing reasons, Margaretville respectfully requests the Commission (1) to provide a reasoned response to Margaretville's comments, (2) to rescind its assertion of intrastate jurisdiction, (3) to narrowly tailor its implementation of Section 251 of the 1996 Act to the statutory and constitutional limitations on its authority, (4) to vacate those national rules that command state regulation, and (5) to publish guidelines to aid state commissions in the exercise of their authority under Section 252 of the 1996 Act.

Respectfully submitted,

MARGARETVILLE TELEPHONE CO., INC.

By 

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August 30, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **Notice of Written Ex Parte Presentation**
CC Docket No. 96-98

Dear Mr. Caton:

On behalf of the Margaretville Telephone Co, Inc., this notice is submitted in accordance with Section 1.1206(a)(1) of the Commission's Rules, with the original and one copy submitted to the Commission's Secretary.

At the direction of Larry S. Roadman, President of Margaretville Telephone Co., Inc., a copy of the attached letter was provided to Rudolfo M. Baca, concerning the above-referenced docket. The letter was addressed to The Honorable James Quello, Commissioner.

Very truly yours,

B. Lynn F. Ratnavale

c: Rudolfo M. Baca (by hand-delivery)

Margaretville Telephone Co., Inc.
Margaretville, New York 12455

August 30, 1996

The Honorable James H. Quello
Commissioner
Federal Communications Commission
Washington, D.C. 20554

Re: August 8, 1996 Statement of Commissioner Quello on the FCC's Interconnection Report and Order under the Telecommunications Act of 1996 - CC Docket No. 96-98.

Dear Commissioner Quello:

I want to thank you for issuing your statement regarding the Commission's Interconnection Report and Order. Your specific recognition of and interest in the unique concerns of the small, rural telephone companies was particularly appreciated.

As the president of the small company whose comments were cited in your statement, I am also writing to clarify our comment regarding an incumbent telephone company's "reasonable, investment-backed expectation to hold competitive advantages over new market entrants." We are not seeking to perpetuate our monopolistic advantage in the face of the tide of telecommunications competition. We are trying to establish our right to compensation, in some appropriate form, for what is to be taken from us.

Interestingly, you alluded to this right to compensation in your statement, when you addressed the Bell Operating Companies: "You will open your markets to competitors, and in return you will become competitors in other markets" (emphasis added). Our comments to the Commission were intended to highlight 1) our understanding of our right to compensation and 2) the de facto receipt of such "compensation" by the Bell Companies who were provided new opportunities to compete in new markets within their own service areas.

Since 1916

914-586-3311
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In their Order, we believe the Commission incorrectly rejected our position. Your statement gives indication that the meaning of our comment may have been misunderstood, thereby leading to a rejection of our position.

Again, I want to thank you for the interest and commitment shown by you in issuing your statement.

Sincerely,

Larry S. Roadman

Larry S. Roadman
President

cc: Rudolfo M. Baca